

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

LaFayette Post Office
LaFayette, Kentucky

Docket No. A2012-51

ORDER AFFIRMING DETERMINATION

(Issued February 14, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 3, 2011, Ellin Francis, Mayor of LaFayette, Kentucky (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the LaFayette, Kentucky post office (LaFayette post office).² The Final Determination to close the LaFayette post office is affirmed.³

II. PROCEDURAL HISTORY

On November 18, 2011, the Commission established Docket No. A2012-51 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On November 18, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

² Petition for Review received from Ellin Francis regarding the LaFayette, Kentucky post office 42254, November 3, 2011 (Petition).

³ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁴ Order No. 980, Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 18, 2011.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, November 18, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the LaFayette, Kentucky Post Office and Continue to Provide Service by Rural Route Service (Final Determination).

⁶ United States Postal Service Comments Regarding Appeal, December 27, 2011 (Postal Service Comments).

Petitioner filed a participant statement supporting her Petition.⁷ On January 12, 2012, the Public Representative filed comments.⁸

III. BACKGROUND

The LaFayette post office provides retail postal services and service to 91 post office box customers. Administrative Record, Item 18 at 1. There are 59 rural delivery and 32 highway contract route box customers served through this post office. *Id.* The LaFayette post office, an EAS-55 level facility, provides retail service from 8:00 a.m. to 11:30 a.m. and 12:00 p.m. to 3:00 p.m., Monday through Friday, and 8:30 a.m. to 10:30 a.m. on Saturday. Final Determination at 2. The lobby is open 24 hours daily, Monday through Saturday. *Id.*

The postmaster position became vacant on August 29, 2009, when the postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average five transactions daily (five minutes of retail workload). Post office receipts for the last 3 years were \$11,966 in FY 2008; \$11,764 in FY 2009; and \$11,810 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$26,945 annually. *Id.* at 8.

After the closure, retail services will be provided by the Hopkinsville post office located approximately 18 miles away.⁹ *Id.* at 2. Delivery service will be provided by rural route service through the Hopkinsville post office. The Hopkinsville post office is an EAS-21 level post office, with retail hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday. There are 40 post office boxes

⁷ Participant Statement received from Ellin Francis, *et al.*, December 8, 2011 (Participant Statement).

⁸ Comments of the Public Representative, January 12, 2012 (PR Comments).

⁹ MapQuest estimates the driving distance between the LaFayette and Hopkinsville post offices to be approximately 18.5 miles (30 minutes driving time).

available. *Id.* The Postal Service will continue to use the LaFayette name and ZIP Code after closing. *Id.* at 7, Concern No. 4.

Retail services will also be available at the Herndon post office located approximately 7 miles away.¹⁰ *Id.* at 2. The Herndon post office is an EAS-13 level post office, with retail hours of 7:30 a.m. to 4:00 p.m., Monday through Friday, and 7:30 a.m. to 9:30 p.m. on Saturday. *Id.* There are 28 post office boxes available. *Id.*

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the LaFayette post office. Petitioner contends that the Final Determination contains erroneous information and the Postal Service did not appropriately consider how it will provide effective and regular postal services to the community upon closure. Petition at 1.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the LaFayette post office. Postal Service Comments at 2. The Postal Service believes the appeal raises two main issues: (1) the impact on effective and regular postal services to the community; and (2) factual errors in the Final Determination. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the LaFayette post office should be affirmed. *Id.* at 1-2.

The Postal Service explains that its decision to close the LaFayette post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- the potential for a Village Post Office;

¹⁰ MapQuest estimates the driving distance between the LaFayette and Herndon post offices to be approximately 7.5 miles (12 minutes of driving time).

- very little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 6. The Postal Service contends that it will continue to provide regular and effective postal services to the LaFayette community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, the effect on the LaFayette community, economic savings, and the effect on postal employees. *Id.* at 1-2, 12-13.

Public Representative. The Public Representative contends the Postal Service has not appropriately considered the effect the closing will have on the LaFayette community. PR Comments at 6. The Public Representative notes that according to the Administrative Record, the LaFayette post office currently has 91 post office box customers. *Id.* She points out that the Hopkinsville post office has 40 post office boxes available for rent and the Herndon post office has 28 post office boxes available for a combined availability of 68 post office boxes. *Id.* Item No. 33 at 2. She argues that the Postal Service failed to provide information on how the Hopkinsville post office or the Herndon post office will accommodate all the existing LaFayette post office box customers. Postal Service Comments at 6.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the

law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On May 19, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the LaFayette post office. Final Determination at 2. A total of 184 questionnaires were distributed to customers. Other questionnaires were made available at the retail counter. A total of 36 questionnaires were returned. On June 9, 2011, the Postal Service held a community meeting at the LaFayette Baptist Church to address customer concerns. Fifty-nine (59) customers attended the meeting. *Id.*

The Postal Service posted the proposal to close the LaFayette post office with an invitation for comments at the LaFayette, Herndon, and Hopkinsville post offices from June 24, 2011 through August 25, 2011. *Id.* The Final Determination was posted at the same three post offices from October 7, 2011 through November 8, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. LaFayette, Kentucky is an incorporated community located in Christian County, Kentucky. Administrative Record, Item No. 16; Final Determination at 7, Concern No. 5. The community is administered politically by the LaFayette City Council and a Mayor. Final Determination at 1. Police protection is provided by the Christian County Sheriff. Administrative Record, Item No. 16. Fire protection is provided by the LaFayette Volunteer Fire Department. The community is comprised of farmers, retirees, self-employed, and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the LaFayette community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the LaFayette post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 2-9.

The Petitioner contends that the Postal Service has not taken into account the effect on the community because the two main businesses in LaFayette have declined to become Village Post Offices (VPO). Petition at 1. The Postal Service contends it is actively seeking a partnership with local businesses to operate a VPO. According to the

Postal Service, a VPO could provide retail services, such as stamp sales and Priority shipping, as well as delivery service by serving as a location for post office boxes. The Postal Service continues to pursue this option. Postal Service Comments at 5, 7.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the LaFayette postmaster retired on August 29, 2009 and that an OIC has operated the LaFayette post office since then. Final Determination at 2. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.* at 8-9.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the LaFayette post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to LaFayette customers. Postal Service Comments at 7-10. It asserts that customers of the closed LaFayette post office may obtain retail services at the Hopkinsville post office located 18 miles away or the Herndon post office which is located 7 miles away, and has 28 boxes available. Final Determination at 2. Delivery service will be provided by rural route service through the Hopkinsville post office. The LaFayette post office box customers may also obtain Post Office Box service at the Hopkinsville post office, which has 40 boxes available. *Id.*

For customers choosing not to travel to the Hopkinsville or Herndon post offices, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 8-9. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

The Public Representative argues that if every LaFayette post office box user wanted to rent a mailbox at the Hopkinsville or Herndon post offices, there would be a shortage of 23 post office boxes. PR Comments at 6.

The Postal Service states that customers will receive incoming mail at a rural mailbox, cluster box units, or at post office boxes at a nearby post office. Postal Service Comments at 9-11. The Postal Service believes that with the increased use of rural mailboxes, cluster box units, and the increase in the distance to rent a mailbox, there will likely be a significant decrease in demand for rented post office boxes. The Postal Service also notes that delivery and retail services may be available from a rural delivery carrier alleviating the need to travel to another post office. Postal Service Comments at 9. As the Commission has noted previously, the Postal Service should ensure that an adequate number of post office boxes will be available at nearby post offices to meet demand.¹¹

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$26,945. Final Determination at 8. It derives this figure by summing the following costs: postmaster salary and benefits (\$30,740) and annual lease costs (\$1,925), minus the cost of replacement service (\$5,720). *Id.*

The Commission has previously observed that the Postal Service should include in its estimate of savings those costs likely to be eliminated by the closing. The LaFayette post office postmaster retired on August 29, 2009. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. *Id.* at 9. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket

¹¹ See Docket No. A2012-2, Order No. 1167, Order Affirming Determination, January 24, 2012 at 9-10; Docket No. A2011-98, Order No. 1137, Order Affirming Determination, January 17, 2012; Docket No. A2011-75, Order No. 1114, Order Affirming Determination, January 9, 2012 at 9; Docket No. A2011-66, Order No. 1107, Order Affirming Determination, January 5, 2012 at 8.

No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011 at 10. Furthermore, notwithstanding that the LaFayette post office has been staffed by an OIC for approximately 2 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the LaFayette post office is affirmed.¹²

It is ordered:

The Postal Service's determination to close the LaFayette post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

¹² See footnote 3, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

I agree with the Public Representative that the Postal Service has not adequately taken into account the impact on the community, nor will it provide adequate or comparable service for LaFayette customers.

Eighteen (18) miles of driving in rural Kentucky—with its often uneven topography—is a long distance to travel. Several members of Congress have publicly expressed concern that post offices that are 10 miles apart should be maintained in rural areas. The Postmaster General has expressed interest in finding other ways to serve such distant post offices rather than close them altogether. Recent legislation has been introduced precluding the closure of a post office in cases where the nearest post office is more than 10 miles away. The Commission in its recent Advisory Opinion (Docket No. N2011-1) found that using optimization modeling, the Postal Service could make better choices about which post offices to close that would assure adequate access in rural areas.

The designation of the administrative receiving post office can be significant to local postal customers because that will be the location where undeliverable or accountable items are retrieved, where some parcels must be deposited, or certain other “in-person” business is conducted. The Administrative Record does not address with specificity reasonable customer concerns about the large travel distance to the new administrative retail post office. Without a more complete explanation of how removing the applicable retail facility to such a distant point will affect the community, the Postal Service has not satisfied its obligation to consider the effect of such closing or consolidation on the community served by the post office, as required by 39 U.S.C. § 404(d)(2)(A)(i).

Additionally, vague promises of a potential Village Post Office (VPO) in this Administrative Record are not sufficient to submit as an appropriate substitute service in a determination to close the LaFayette post office. This is especially true when it appears that two businesses have already declined this option, and it took more than 2 years to install a VPO in another rural community (Hacker Valley, West Virginia). A contract for a VPO should be signed and presented to the community before the LaFayette post office is set for discontinuance. See, e.g., Docket No. A96-7, Twin Brooks, South Dakota 57269, March 21, 1996 (remanding the Postal Service's decision to consolidate (convert) a post office into a Community Post Office (CPO) where the Postal Service did not identify a viable CPO location, failed to show what type of service the community would receive and thus failed to show that the community would receive effective and regular postal service.)¹³ Cf. Docket No. A2011-81, Clarksville Post Office, Order No. 1150 (remanding a decision to close a post office where, among other factors, there was a shortfall in the number of substitute post office boxes and there was no indication that the Postal Service intended to install cluster box units) (January 19, 2012).

Furthermore, the Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the LaFayette post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on August 29, 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

¹³ Available at <http://www.prc.gov/prcarchive/viewpdf.aspx?docid=30485>.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

The Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of LaFayette, Kentucky and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since August 2009, not an EAS-55 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

The Postal Service also did not adequately consider the effects on the community and whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining" as required by 39 U.S.C. § 404(d)(2)(A)(i) and (iii).

The Public Representative indicates that the LaFayette post office has 91 post office box holders, while the Hopkinsville post office has 40 post office boxes available for rent and the Herndon post office has 28 post office boxes available for rent. Should all the LaFayette post office box holders rent boxes at either the Hopkinsville or Herndon post office, there would be a shortage of 23 post office boxes. Public Representative Comments at 6.

The Postal Service notes that customers will receive incoming mail at a rural mailbox, cluster box units (CBUs), or may elect to have Post Office Box Service at a nearby post office. Postal Service Comments at 9-11. However, the Administrative Record does not include any cost calculation for the installation of CBUs.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the LaFayette post office and should be remanded.

Nanci E. Langley